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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Shasta)

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THE PEOPLE,

Plaintiff and Respondent,

v.

MARCELO PATRICK BANUELOS,

Defendant and Appellant.

C053246

(Super. Ct. Nos. 05F7990,  
05F9492, 06F1564)

Pursuant to a negotiated settlement in four cases, defendant Marcelo Patrick Banuelos pled guilty as follows: In case No. 05F7990, to assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1));<sup>1</sup> in case No. 05F9492, to assault with a deadly weapon (§ 245, subd. (a)(1)); in case No. 06F1564, to assault with a deadly weapon (§ 245, subd. (a)(1)) plus an admission of an on-bail enhancement (§ 12022.1, subd. (b)); and in case No. 06F1565, to assault (§ 243, subd. (d)) and vandalism (§ 594, subd. (b)(1)), each a misdemeanor. In exchange for defendant's pleas

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<sup>1</sup> Undesignated section references are to the Penal Code.

and admissions he was promised no more than seven years in prison and the dismissal of other charges.

Defendant received a seven-year term as follows: In case No. 05F7990, the middle term of three years; in cases Nos. 05F9492 and 06F1564, an effective consecutive term of one year each plus two years consecutive for the on-bail enhancement; and in case No. 06F1565, credit for time served. The court imposed restitution fines of \$700 each pursuant to sections 1202.4 and 1202.45, a court security fine of \$20 in each case pursuant to section 1465.8, an administrative fee of \$400 pursuant to section 1202.4, subdivision (a), restitution of \$4,024.31 pursuant to section 1202.4, subdivision (f), to the victim/witness program; and victim restitution to William Smith of \$1,383.97. The court awarded defendant 272 days of presentence custody credit.

#### FACTS

Case No. 05F7990: While in a bar, defendant became angered at a female who had made a comment about him in the past. Defendant spit on her and when her male companion attempted to intervene, defendant struck him with a bar stool.

Case No. 05F9492: Defendant became angered at another driver, gave him the finger and challenged him to fight. When the other driver refused to do so and continued driving defendant threw a beer bottle at him, striking him in the face.

Case No. 06F1564: Defendant, while standing beside the road, threw a rock at a passing car which shattered the windshield. The driver chased defendant, fought with him and got punched in the eye.

Case No. 06F1565: Defendant and others beat two persons at a reservoir.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant. Having undertaken an examination of the entire record, aside from two clerical errors in the abstract of judgment which we shall order corrected, we find no arguable error that would result in a disposition more favorable to defendant.

Although the probation officer's report recommended restitution of \$4,034.31 to the victim/witness program, the court orally imposed an amount of \$4,024.31. The abstract of judgment shows the amount of \$4,034.31. The abstract of judgment also shows two "12022.1(B)" enhancements for case No. 05F9492, each for one year. The oral pronouncement of judgment applied one section "12022.1(B)" enhancement, for which the penalty is two years, to case No. 06F1564, and no enhancement for case No. 05F9492. We shall direct that the abstract of judgment be corrected to conform with the court's oral pronouncement of judgment. (See *People v. Zackery* (2007) 147 Cal.App.4th 380, 385 [where discrepancy exists between oral pronouncement of judgment and abstract of judgment, oral pronouncement controls].)

DISPOSITION

The superior court is directed to amend the abstract of judgment in accordance with this opinion and forward a certified copy to the Department of Corrections and Rehabilitation. The judgment is affirmed.

SIMS, Acting P.J.

We concur:

HULL, J.

BUTZ, J.